



## CALIFORNIA HIGH-SPEED RAIL AUTHORITY

### MEMORANDUM

**To:** Chairperson and Authority Members

**Date:** January 25, 2010

**From:** Mehdi Morshed, Executive Director

**Subject:** Agenda Item 8 - 2009-10 High Speed Train Legislation

#### Discussion

The Authority's staff regularly presents an action item summarizing new high-speed train legislation introduced in the 2009-10 Legislative Session. In 2009, the first year of the legislative session, ten (10) bills were identified at one time or another as directly affecting or having the potential to affect in different ways the high-speed train project or related intercity passenger rail operations. The initial legislative report anticipated that the Authority could be asked for its views, if any, on the various measures as the new bills were scheduled for legislative policy and fiscal hearings and started to move through the legislative process. The April 2009 and subsequent monthly reports highlighted the provisions of the various bills and recommended to the Board formal positions on several bills and that the Board monitor the status and progress of the other identified bills. After discussion at its May meeting, the Board approved the staff report's recommended positions and action on several bills and asked that staff keep board members informed of important changes and developments in the language or status of the bills. The monthly legislative report provides this information.

The Legislature concluded its work on legislation for 2009 on September 11<sup>th</sup> and recessed the regular legislative session at that time. The 2009-10 session reconvened on January 4, 2010 and the Legislature resumed work on holdover bills that were introduced in 2009 and that remain viable. Several deadlines loom in January and February with respect to the holdover bills and new legislative proposals under development:

- January 22: last day for committees to hear and report to the Floor bills introduced in their house in 2009. Last day to submit bill drafting requests to Legislative Counsel for 2010.
- January 31: Last day for each house to pass bills introduced in its house in 2009. (Bills failing to move out of the house of origin are "dead".)
- February 19: Last day to introduce new bills for 2010.

An updated and revised summary of still-pending legislation affecting the HSRA is presented in this report. The “current approved positions” noted for each bill are those positions formally adopted by the Board at its prior meetings.

**Recommendation:**

Authority staff propose that the Authority continue its prior approved actions regarding positions on specific high-speed train legislation and direct the Executive Director to communicate any Board positions to the appropriate committees and respective authors of the bills as necessary. If there are no proposed changes, then no further Board action is necessary:

1. **AB 153 (Ma)** – *Operations and duties of the High Speed Rail Authority - Successor legislation to the Authority-sponsored AB 981 (Ma, 2007, later used for other issues).* The bill deletes language made obsolete by the passage of AB 3034 (Prop. 1A) last year regarding a financial plan and makes several technical and clarifying changes to statutes governing the powers duties of the Authority (for example, makes a technical reference that the Board is the “governing authority” of the Authority in cases of eminent domain, clarifies that the Authority’s existing eminent domain powers exempt the Authority from having to rely on the state Public Works Board to acquire property, and deletes obsolete contingency language and updates provisions requiring the Authority to prepare construction plans for the HST system). The bill also provides that the Authority may hire its own legal counsel (and continue to use the services of the Attorney General, or both), similar to provisions for the California Transportation Commission.

Bill history/status: Approved by Assembly Transportation Committee on 3/23/09, 9-0; approved by Assembly Judiciary Committee 7-2 on 4/14/09; approved by Assembly Appropriations Committee 11-5 on 4/29/09; approved by Assembly 53-16 on 5/11/09. Sent to Senate; double-referred to Transportation and Housing and Judiciary Committees. Set for hearing in Transportation and Housing on 6/23/09; put over/postponed to later hearing by Committee, with proposed committee amendments presented to the author. No new hearing scheduled; may be heard in 2010. Two-year bill.

Current approved position: As sponsor of the bill, request that author cease further efforts to secure passage of the measure at this time. (July 20, 2009 letter sent to author requesting this.)

2. **AB 289 (Galgiani)** – *Requires that the Authority use the proceeds of the Proposition 1A high speed rail bonds to match federal high-speed rail stimulus funds to the extent possible. Further author’s amendments are pending that would authorize the Governor to appoint five exempt employees to the Authority who would serve as deputy directors of the Authority.*

Re current contents: Proposition 1A (AB 3034), the Safe, Reliable High-Speed Passenger Train Act for the 21<sup>st</sup> Century, was approved by state voters on November 4, 2008. Prop. 1A controls the expenditure of the bond funds and imposes conditions on the use of the funds for development and construction of the high-speed train (HST) project, including that no more than 50% of the construction cost in any corridor or usable segment can come from the bond funds. Prop. 1A also requires the Authority to pursue and obtain other private and public funding, including federal funding for the HST project. Separately, the revised 2009-10 Budget Act appropriation for the Authority provides that the state appropriation for the Authority's operating and project expenses may be reduced and replaced (substituted) by an equivalent amount of any federal stimulus funds made available through the American Recovery and Reinvestment Act (ARRA).

The bill directs the Authority to seek federal ARRA funding by matching such funds with state bond funds. The bill requires the Authority, to the extent possible, to use the Prop. 1A bond funds to match federal high speed rail grant funds available under the ARRA.

Re pending amendments: The proposed language addition would give the Governor the power to appoint five additional employees to the Authority, who would be exempt from civil service, to serve as deputy directors of the Authority at the pleasure of the executive director. The amendments state that the additional staff are necessary for high-speed rail development activities related to the receipt of federal American Recovery and Reinvestment Act (ARRA) funds.

Bill history/status: Approved by Assembly Transportation Committee 13-0 on 4/27/09; approved by Assembly 72-3 on 5/18/09. Sent to Senate and referred to Senate Environmental Quality Committee; hearing pending. Author prepared and added amendments on 8/17/09 to delete former contents and change subject matter to requiring state action relative to matching federal ARRA high-speed rail stimulus funding. Re-referred to Senate Committee on Rules.

Current approved position: Support

3. **AB 1375 (Galgiani)** – *Department of High Speed Trains. Creates a Department of High-Speed Trains within the Business, Transportation and Housing Agency to implement the policies of the High-Speed Rail Authority and perform the daily tasks of building the high-speed train project and implementing the HST system.* The Authority would continue as the policy and oversight body of the HST project and exercise those powers and duties described in Proposition 1A. The bill would transfer certain of the existing powers and responsibilities of the Authority to the department and add new duties, including the annual submission of a 6-year high-speed train capital improvement program and a separate progress report to the Legislature. The Governor would appoint the department director and the Governor could appoint up to 10 exempt executive employees to staff the department, who would serve at the pleasure of the director. The bill would extend the Authority's/departments' rights-of-way and property acquisition and management authority to parallel that exercised by Caltrans and would authorize the employment of in-house legal counsel.

The bill was amended and reactivated on 1/15/10 to facilitate the measure's consideration by the Assembly and potential movement to the Senate. The new amendments switched from the Authority to the Governor responsibility for appointing the executive director of the Authority and placed various Proposition 1A-related functions (day-to-day activities) under the new department rather than the Authority.

Bill history/status: Approved by Assembly Transportation Committee 9-4 on 4/27/09; referred to Assembly Appropriations Committee. (Hearing postponed by Committee; Pending in Appropriations Committee at request of Assembly Speaker. Approved by Assembly Appropriations Committee on 1/21/10 and referred to the Assembly Floor.

Current approved position: Monitor

4. **SB 409 (Ducheny)** – *Creates a Department of Railroads in the Business, Transportation and Housing Agency, responsible for several current state rail programs.* The bill would combine in a single new agency several state rail functions and operations currently residing in other agencies: Caltrans' intercity rail (AMTRAK) program, the Public Utilities Commission's and Caltrans' goods movement (freight) rail programs, and the high-speed train (HST) program/project. The new department would also include the state's railroad grade separation programs and be responsible for the coordination of regional planning efforts for rail transportation. The department would be the only agency eligible to apply for and receive grant and loan funds from the federal government

or other sources for intercity rail, high-speed rail, or freight rail purposes. The High Speed Rail Authority would become a division of the new Department of Railroads. The Department of Railroads would be under the control of a new Director of Railroads.

The position of Executive Director of the Authority would be eliminated. Instead, the Authority would be administered by a division chief who would be nominated by and report to the new Director of Railroads, and be approved by the Authority. The Director of Railroads would be nominated by the Governor and be subject to Senate confirmation, would serve as a member of the board of the Authority, and would permanently chair the Authority and preside at all its meetings. (The relationships and interaction among the Authority's new division chief, the new Director of Railroads and the Board of the Authority are not clearly spelled out and require clarification and further development.) The bill would require that a task force composed of the Director of Transportation, Director of Railroads and a Public Utilities Commission representative be formed to resolve issues of overlapping jurisdiction of the agencies, but it is not clear whether the task force would have sufficient authority to implement any additional operational, administrative or structural changes or whether subsequent legislation would be required.

Bill history/status: Heard in Senate Transportation and Housing Committee as an information item on 4/14/09. Rule waiver granted 5/28/09 to allow bill to be heard in policy committee after bill action deadlines. Approved by Senate Transportation and Housing Committee 10-0 on 6/9/09. Referred to Senate Appropriations Committee; set for hearing 7/23/09 pending rule waiver approval. Waiver granted; bill heard and placed on Senate Appropriations Committee Suspense File on 7/23/09. Approved by Senate Appropriations 13-0 on 8/4/09; pending on Senate Floor.

Current approved position: Oppose (Letter sent to author July 9, 2009.)

5. **SB 455 (Lowenthal)** – *Operations and duties of the High Speed Rail Authority. Makes numerous conforming changes to statutory provisions and adds specific references to the Authority in statutes governing property acquisition activities and eminent domain. Adds additional Phase 1 project selection criteria and requires Senate confirmation of some Board appointees. Requires the Authority to prepare an overall project schedule on a quarterly basis, approve a quarterly contract status report, and approve all contract amendments at board meetings.* The bill proposes many technical and conforming changes to the Authority's property acquisition powers and incorporates several changes to law regarding property management as suggested by the Authority's legal counsel. The bill clarifies that the Authority has independent authority parallel to that of Caltrans in these property acquisition, management and disposition activities and is not under the

general property management scheme administered by the Department of General Services for other agencies.

The bill also makes several author-initiated substantive changes to the Authority and its operations: a) the Governor's 5 appointees to the Authority would be subject to Senate confirmation (prospectively); b) the Authority would have to consider additional project selection criteria for investments in Phase 1 of the HST project—including access to railroad stations and terminals, improvements to travel times, service reliability, safety, improved connections between the San Joaquin Valley and southern California and the Bay Area, etc., or some combination of them; c) the Authority would have to prepare an overall project schedule with delivery milestones and related information and present the report quarterly to the board and the Legislature; d) the board would have to approve quarterly a written report on the status of contracts for the previous quarter, and submit the reports to the Legislature; and e) the board would have to formally approve all proposed amendments to contracts, including contract change orders, accompanied by a written report explaining the changes.

Bill history/status: Approved by the Senate Transportation and Housing Committee 10-1 on 4/22/09; approved by Senate Appropriations Committee 9-4 on 5/27/09; Approved by Senate 32-5 on 6/2/09. Sent to Assembly. Approved by Assembly Transportation Committee 10-4 on 6/29/09; approved by Assembly Appropriations Committee 11-5 on 7/15/09. Referred to Assembly Floor Third Reading File; placed on Inactive File on 7/24/09.

Current approved position: Monitor